

Modified Order

IN THE MATTER OF

INLAND CONTAINER CORPORATION ET AL.
MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket 7993. Complaint, June 24, 1960—Decision, March 1, 1966

Order modifying the divestiture order of the Commission of July 31, 1964, 66 F.T.C. 329, in accordance with a final order of the Court of Appeals, Seventh Circuit, dated January 27, 1966, requiring respondent, in lieu of divestiture, to establish, as an effective competitor, a corrugated shipping container manufacturing plant in the Louisville, Ky., area, providing necessary assistance as required by order herein;

The divestiture order of July 31, 1964 directed respondent to sell the Louisville, Ky., corrugated shipping container plant of the General Box Co., which it acquired in 1958.

MODIFIED ORDER

Inland Container Corporation and its subsidiary by the same name, having filed in the United States Court of Appeals for the Seventh Circuit on September 23, 1964, a petition to review and set aside the order of divestiture issued herein on July 31, 1964 [66 F.T.C. 329]; and the Commission and respondents having subsequently agreed upon the provisions of a final order modifying the order entered by the Commission on July 31, 1964; and the Court, on January 27, 1966, having issued its final order affirming and enforcing said order as submitted by the Commission and respondents;

Now, therefore, it is hereby ordered, That the order of July 31, 1964, be, and it hereby is, modified in accordance with the final order of the Court to read as follows:

It is ordered, That:

I

The terms listed below are used herein in the sense defined unless otherwise indicated by their content.

A. *Louisville.* The area within a ten-mile radius of the city limits of Louisville, Kentucky.

B. *Eligible Company.* A corrugated shipping container manufacturer (1) not controlled directly or indirectly by Inland; (2) with no shipping container plant in the Louisville area at this time; (3) which can make a showing that it intends to conduct a shipping container manufacturing business with an additional

corrugator plant in the Louisville area, provided it can be furnished adequate financial backing for the same, and (4) which is approved in advance by the Commission.

C. *Corrugator plant*. A plant for the manufacture of corrugated shipping containers which is equipped with a corrugator.

D. *Sheet plant*. A plant which performs the same functions as a corrugator plant in the manufacture of corrugated shipping containers except that it does not manufacture, but purchases corrugated sheets.

II

Respondents, Inland Container Corporation and its wholly owned subsidiary Inland Container Corporation, and their officers, directors, agents, representatives, and employees, shall as soon as practicable, but in no event in excess of one (1) year from the date this order becomes final, present an Eligible Company and a contract between respondents and said Eligible Company, both subject to Commission approval, providing for and containing the following: The Eligible Company will, within one (1) year following Commission approval, enter into business as a corrugator plant, or, at the option of said Eligible Company, as a sheet plant. In the event Eligible Company elects to enter the corrugated shipping container business as a sheet plant, respondents' contract with the Eligible Company shall provide that said Eligible Company will phase into and engage in business as a corrugator plant and to achieve such status and to operate as such within two (2) years from the date of commencement of the operation of said Eligible Company's plant.

III

Respondents, in connection with the requirements of Paragraph II of this order, will:

A. Assure to Eligible Company, by way of becoming surety for its borrowings or guarantor of its obligations, adequate financing, in addition to its own funds available for the purpose, sufficient to enable said Eligible Company to provide for itself at Louisville—

(1) A building suitable for the operation of a corrugator plant with corrugator capacity of a minimum of 300-million square feet per year.

(2) Such machinery, equipment, facilities, and other property as may be necessary to make such plant a sound and going concern for the manufacture and sale of corrugated

shipping containers. The corrugator shall have a capacity of a minimum of 300-million square feet per year.

(3) Adequate working capital for the opening and early expansion of the business above described for a period of three (3) years beginning with the opening of the plant for business.

IV

Respondents shall maintain a continuing offer by the contract with the Eligible Company for an agreed initial period of two years after opening of the plant either to buy sheets and/or containers from it, or assign customer orders to it for its own account to a total of not less than thirty-five (35) million square feet per year of corrugated sheets and/or containers.

V

If the Eligible Company does not achieve as its own business (*i.e.*, excluding sales to or for respondents' account) sales in any quarter of twenty-five (25 mm.) million square feet during its third year of operation, respondents shall continue in good faith their efforts to assign to the Eligible Company as its own business the difference between the Eligible Company's achieved quarterly volume and twenty-five (25 mm.) million square feet for each quarter of the third year of operation to assure in the third year a minimum total of one hundred (100 mm.) million square feet of its own business. In the event respondents' best efforts fail to produce sufficient assigned business and they can establish before the Commission that they have acted in good faith, the deficit may then be made up by respondents with other than assigned business.

VI

The selection of orders to be filled by the Eligible Company's plant shall be made by respondents and the Eligible Company jointly in good faith for the purpose, not only of discharging respondents' volume obligations hereunder, but also to promote an efficient operation of the Eligible Company's plant.

VII

The contract with the Eligible Company will be in form approved by the Commission with prices to be paid to the Eligible Company by respondents equal to those paid by the customers and with prices on assigned orders billed directly by the Eligible Company to the customers at the agreed price. As to any orders

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not so assigned on which respondents may elect to make deliveries, respondents may charge cost of delivery. Said contract may also provide that: the Eligible Company may consider such assigned business which it has been directly servicing with the customers as its own continuing volume at the risk of holding it against competitors other than respondents; the sheets shall be manufactured to respondents' specifications and shall be bought by respondents at not less than the going delivered prices in Louisville at or about the dates of the orders; the containers shall be manufactured to the specifications of assigned customers, or of respondents' customers which are provided to the Eligible Company by respondents.

VIII

In the event the requirements of this order have not been fully met within the time prescribed therein, respondents, upon their showing of good faith efforts to comply with said requirements, shall be heard by the Commission before it issues any further order it may deem appropriate to effectuate and establish as a going concern the additional corrugator plant contemplated in this order.

IX

Respondents shall periodically, within sixty (60) days from the date this order becomes final and every ninety (90) days thereafter until the provisions of this order have been complied with, submit to the Commission a detailed written report of their actions, plans and progress in complying with the provisions of this order and fulfilling its objectives.
